

rather than in its common law or technical sense as including acquisition by condemnation or other means except descent. The case of *Kohl et al. v. United States*,⁶ which was decided in 1878 and which is the first case of the Supreme Court of the United States recognizing the sovereign power of the Federal Government to condemn land within a State, involved a proceeding by the United States to expropriate a parcel of land for a post office site. An original act of Congress⁷ authorized the "purchase" of the site, but the land could not be acquired through negotiations with the owners. Congress, recognizing that the authority to purchase did not include the authority to condemn, passed a supplementary act⁸ which expressly authorized condemnation of the property. In discussing the Government's authority to condemn the property under the original act, the Court said, "The authority here given was to purchase. If that were all, it might be doubted whether the right of eminent domain was intended to be invoked. It is true, the words 'to purchase,' might be construed as including the power to acquire by condemnation; for, technically, purchase includes all modes of acquisition other than that of descent. But generally, in statutes as in common use, the word is employed in a sense not technical, only as meaning acquisition by contract between the parties, without governmental interference."

In the *Leavenworth* case⁹ the word "purchase" as used in the Constitution was given its popular, rather than technical, meaning, the Court distinguishing between "direct purchase" and acquisition "by exercising the right of eminent domain." In a Montana case, the Supreme Court of that State held that the word "purchase" as used in the Constitution "does not have the technical meaning of the term at common law of an acquisition of lands other than by descent or inheritance, but has the meaning of an acquisition thereof by an actual purchase."¹⁰

In the *Dravo* case,¹¹ Chief Justice Hughes, speaking for the Court, said, "It is not questioned that the State may refuse its consent and retain jurisdiction consistent with the governmental purposes for which the property was acquired. The right of eminent domain inheres in the Federal Government by virtue of its sovereignty and thus it may, regardless of the wishes either of the owners or of the States, acquire the lands which it needs within their borders. *Kohl v. United States*, 91 U. S. 367, 371, 372. *In that event, as in cases of acquisition by purchase without consent of the State, jurisdiction is dependent upon cession by*

⁶ *Kohl et al. v. United States*, 91 U. S. 367, 374.

⁷ Approved March 12, 1872 (17 Stat. 39).

⁸ Approved June 10, 1872 (17 Stat. 352, 353).

⁹ *Fort Leavenworth v. Lowe*, 114 U. S. 525, 5 S. Ct. 995.

¹⁰ *State v. Bruce*, 69 P. (2) 97, 102 (Mont.), citing *Crook Horner Co. v. Old Point Comfort Hotel Co.*, 54 Fed. 604.

¹¹ *James v. Dravo Contracting Co.*, 302 U. S. 134, 147, 58 S. Ct. 208.